

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION**

**SHIRLEY GIBSON, ET AL.**

**PLAINTIFFS**

**VS.**

**CIVIL ACTION NO. 3:23-CV-00033-TSL-MTP**

**CITY OF LEXINGTON, MISSISSIPPI, ET AL.**

**DEFENDANTS**

**DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES  
TO PLAINTIFFS' COMPLAINT**

Municipal Defendants the City of Lexington, Mississippi, Charles Henderson, in his individual and official capacities, and Austin Moore, in his individual and official capacities (“Municipal Defendants”), submit this Answer and Affirmative Defenses to Plaintiffs Shirley Gibson and Oliver Brooks’ (“Plaintiffs”) Complaint (“complaint”).

**FIRST AFFIRMATIVE DEFENSE**

Plaintiffs’ complaint fails to state a claim upon which relief can be granted, in whole or in part.

**SECOND AFFIRMATIVE DEFENSE**

Municipal Defendants plead all applicable statutes of limitations.

**THIRD AFFIRMATIVE DEFENSE**

To the extent that Plaintiffs did not exhaust their pre-suit remedies or obligations under federal or state law for some or all of their allegations, claims, or theories, those allegations, claims, or theories may not be pursued in this action.

**FOURTH AFFIRMATIVE DEFENSE**

Municipal Defendants affirmatively plead that an award of punitive damages would amount to a violation of the United States and Mississippi Constitutions.

**FIFTH AFFIRMATIVE DEFENSE**

Municipal Defendants plead the defenses of good faith and/or honest belief.

**SIXTH AFFIRMATIVE DEFENSE**

To the extent applicable, Plaintiffs' claims are barred by the doctrines of collateral, equitable, and/or judicial estoppel and/or res judicata.

**SEVENTH AFFIRMATIVE DEFENSE**

Municipal Defendants plead after-acquired evidence.

**EIGHTH AFFIRMATIVE DEFENSE**

To the extent Plaintiffs have failed to comply with their duty to mitigate their request for damages, their entitlement to which is expressly denied, such damages must be reduced.

**NINTH AFFIRMATIVE DEFENSE**

Municipal Defendants possesses sovereign, absolute, course and scope, and/or qualified immunity herein from suit and/or liability and/or damages.

**TENTH AFFIRMATIVE DEFENSE**

To the extent that Plaintiffs seek special damages, such damages have not been specifically stated.

**ELEVENTH AFFIRMATIVE DEFENSE**

Municipal Defendants are entitled to an award of attorney's fees because this action is vexatious and was brought in bad faith.

**TWELFTH AFFIRMATIVE DEFENSE**

Municipal Defendants plead all statutory damage caps, including those applicable to requests for compensatory and punitive damages.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Municipal Defendants plead the doctrine of unclean hands.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Municipal Defendants acted in good faith at all times in their conduct toward Plaintiffs, and Plaintiffs' own actions, or the actions of a third party for whom Municipal Defendants are

not responsible, were the proximate and superseding cause of any damages Plaintiffs may have sustained. Municipal Defendants invoke all applicable contribution and comparative fault principles.

**FIFTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' alleged injuries were not caused by a policy or custom of the City of Lexington. Therefore, there is no municipal liability under federal law.

**SIXTEENTH AFFIRMATIVE DEFENSE**

Municipal Defendants are entitled to all rights, immunities, and privileges contained in Miss. Code § 11-46-1, et seq., including, but not limited to, all exemptions from liability set forth therein, the notice of claim requirements set forth therein, the limitations on liabilities set forth therein, and the fact that Plaintiffs are not entitled to a jury trial.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

Some or all of Plaintiffs' claims, allegations, and theories are barred by the doctrine of *Heck v. Humphrey*, 512 U.S. 477 (1994).

**ANSWER**

Without waiving any affirmative defenses, and reserving the right to assert further affirmative defenses as they become evident through discovery or further investigation, Municipal Defendants respond to the Complaint as follows:

The unnumbered paragraph beginning "COMES NOW the Plaintiffs" does not appear to require a response. To the extent a response is required, Municipal Defendants admit only that Plaintiffs filed a complaint against them.

**I.**

**INTRODUCTION**

1. Municipal Defendants deny the allegations contained in paragraph 1 of the complaint.

2. Municipal Defendants deny the allegations contained in paragraph 2 of the complaint.

3. Municipal Defendants deny the allegations contained in paragraph 3 of the complaint.

**II.**

**JURISDICTION AND VENUE**

4. Municipal Defendants deny the allegations contained in paragraph 4 of the complaint as stating legal conclusions.

5. Municipal Defendants deny the allegations contained in paragraph 5 of the complaint as stating legal conclusions.

**III.**

**PARTIES**

6. Municipal Defendants deny the allegations contained in paragraph 6 of the complaint for lack of sufficient information.

7. Municipal Defendant denies the allegations contained in paragraph 7 of the complaint as stating legal conclusions.

8. The allegations contained in paragraph 8 of the complaint are not directed at Municipal Defendants and, therefore, do not require a response. To the extent a response is required, Municipal Defendants deny the allegations for lack of sufficient information.

9. In response to the allegations contained in paragraph 9 of the complaint, Municipal Defendant admits only that he may be served as required by law.

10. In response to the allegations contained in paragraph 10 of the complaint, Municipal Defendant admits only that he may be served as required by law.

11. The allegations contained in paragraph 11 of the complaint are not directed at Municipal Defendants and, therefore, do not require a response. To the extent a response is required, the allegations are denied for lack of sufficient information.

#### **IV.**

#### **FACTS**

12. Municipal Defendants deny the allegations contained in paragraph 12 of the complaint.

13. Municipal Defendants deny the allegations contained in paragraph 13 of the complaint.

14. Municipal Defendants deny the allegations contained in paragraph 14 of the complaint.

15. Municipal Defendants deny the allegations contained in paragraph 15 of the complaint.

16. Municipal Defendants deny the allegations contained in paragraph 16 of the complaint.

17. Municipal Defendants deny the allegations contained in paragraph 17 of the complaint.

18. Municipal Defendants deny the allegations contained in paragraph 18 of the complaint.

19. Municipal Defendants deny the allegations contained in paragraph 19 of the complaint.

20. Municipal Defendants deny the allegations contained in paragraph 20 of the complaint.

21. Municipal Defendants deny the allegations contained in paragraph 21 of the complaint.

22. Municipal Defendants deny the allegations contained in paragraph 22 of the complaint, including sub-paragraphs a-d.

23. Municipal Defendants deny the allegations contained in paragraph 23 of the complaint as stating legal conclusions.

**V.**

**PREVIOUS HISTORY, CONDUCT, AND ESTABLISHED POLICIES AND PROCEDURES**

24. Municipal Defendants deny the allegations contained in paragraph 24 of the complaint.

25. Municipal Defendants deny the allegations contained in paragraph 25 of the complaint.

26. Municipal Defendants deny the allegations contained in paragraph 26 of the complaint.

27. Municipal Defendants deny the allegations contained in paragraph 27 of the complaint.

28. Municipal Defendants deny the allegations contained in paragraph 28 of the complaint.

29. Municipal Defendants deny the allegations contained in paragraph 29 of the complaint.

30. Municipal Defendants deny the allegations contained in paragraph 30 of the complaint.

31. Municipal Defendants deny the allegations contained in paragraph 31 of the complaint.

32. Municipal Defendants deny the allegations contained in paragraph 32 of the complaint.

33. Municipal Defendants deny the allegations contained in paragraph 33 of the complaint.

34. Municipal Defendants deny the allegations contained in paragraph 34 of the complaint.

## **VI.**

### **CLAIMS FOR RELIEF**

#### **NEGLIGENCE**

35. In response to the allegations contained in paragraph 35 of the complaint, Municipal Defendants incorporate their prior responses to paragraphs 1-34.

36. Municipal Defendants deny the allegations contained in paragraph 36 of the complaint.

37. Municipal Defendants deny the allegations contained in paragraph 37 of the complaint.

#### **GROSS NEGLIGENCE**

38. In response to the allegations contained in paragraph 38 of the complaint, Municipal Defendants incorporate their prior responses to paragraphs 1-37.

39. Municipal Defendants deny the allegations contained in paragraph 39 of the complaint.

40. Municipal Defendants deny the allegations contained in paragraph 40 of the complaint.

41. Municipal Defendants deny the allegations contained in paragraph 41 of the complaint.

**NEGLIGENT HIRING, RETENTION, SUPERVISION, AND CONTROL**

42. In response to the allegations contained in paragraph 42 of the complaint, Municipal Defendants incorporate their prior responses to paragraphs 1-41.

43. Municipal Defendants deny the allegations contained in paragraph 43 of the complaint.

44. Municipal Defendants deny the allegations contained in paragraph 44 of the complaint, including sub-paragraphs (a)-(d).

45. Municipal Defendants deny the allegations contained in paragraph 45 of the complaint.

**RES IPSA LOQUITUR**

46. In response to the allegations contained in paragraph 46 of the complaint, Municipal Defendants incorporate their prior responses to paragraphs 1-45.

47. Municipal Defendants deny the allegations contained in paragraph 47 of the complaint.

48. Municipal Defendants deny the allegations contained in paragraph 48 of the complaint.

49. Municipal Defendants deny the allegations contained in paragraph 49 of the complaint.

50. Municipal Defendants deny the allegations contained in paragraph 50 of the complaint.



51. Municipal Defendants deny the allegations contained in paragraph 51 of the complaint.

52. Municipal Defendants deny the allegations contained in paragraph 52 of the complaint.

#### **RECKLESS DISREGARD**

53. In response to the allegations contained in paragraph 53 of the complaint, Municipal Defendants incorporate their prior responses to paragraphs 1-52.

54. Municipal Defendants deny the allegations contained in paragraph 54 of the complaint.

55. Municipal Defendants deny the allegations contained in paragraph 55 of the complaint.

#### **VICARIOUS LIABILITY**

56. In response to the allegations contained in paragraph 56 of the complaint, Municipal Defendants incorporate their prior responses to paragraphs 1-55.

57. Municipal Defendants deny the allegations contained in paragraph 57 of the complaint.

#### **AGENCY (MTCA)**

58. In response to the allegations contained in paragraph 58 of the complaint, Municipal Defendants incorporate their prior responses to paragraphs 1-57.

59. Municipal Defendants deny the allegations contained in paragraph 59 of the complaint as stating legal conclusions.

60. Municipal Defendants deny the allegations contained in paragraph 60 of the complaint as stating legal conclusions.

### **ASSAULT**

61. In response to the allegations contained in paragraph 61 of the complaint, Municipal Defendants incorporate their prior responses to paragraphs 1-60.

62. Municipal Defendants deny the allegations contained in paragraph 62 of the complaint.

63. Municipal Defendants deny the allegations contained in paragraph 63 of the complaint.

### **BATTERY**

64. In response to the allegations contained in paragraph 64 of the complaint, Municipal Defendants incorporate their prior responses to paragraphs 1-63.

65. Municipal Defendants deny the allegations contained in paragraph 65 of the complaint.

66. Municipal Defendants deny the allegations contained in paragraph 66 of the complaint.

### **THE COMMON LAW TORT OF OUTRAGE**

67. In response to the allegations contained in paragraph 67 of the complaint, Municipal Defendants incorporate their prior responses to paragraphs 1-66.

68. Municipal Defendants deny the allegations contained in paragraph 68 of the complaint.

69. Municipal Defendants deny the allegations contained in paragraph 69 of the complaint.

**VIOLATION OF CIVIL RIGHTS PURSUANT TO  
TITLE 42 U.S.C. § 1983  
(General Allegations)**

70. In response to the allegations contained in paragraph 70 of the complaint, Municipal Defendants incorporate their prior responses to paragraphs 1-69.

71. Municipal Defendants deny the allegations contained in paragraph 71 of the complaint.

72. Municipal Defendants deny the allegations contained in paragraph 72 of the complaint as stating legal conclusions and for lack of sufficient information.

73. Municipal Defendants deny the allegations contained in paragraph 73 of the complaint.

74. Municipal Defendants deny the allegations contained in paragraph 74 of the complaint.

75. Municipal Defendants deny the allegations contained in paragraph 75 of the complaint.

76. Municipal Defendants deny the allegations contained in paragraph 76 of the complaint.

77. Municipal Defendants deny the allegations contained in paragraph 77 of the complaint as incomplete.

**VIOLATION OF CIVIL RIGHTS PURSUANT TO TITLE 42 U.S.C. § 1983**

**(*MONELL* CLAIM AGAINST DEFENDANT CITY OF JACKSON, MISSISSIPPI<sup>1</sup>)  
(Failure to Implement Appropriate Policies, Customs and Practices)**

78. In response to the allegations contained in paragraph 78 of the complaint, Municipal Defendants incorporate their prior responses to paragraphs 1-77.

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<sup>1</sup> The Complaint refers to the City of Jackson and the Jackson Police Departments in various paragraphs, but the City of Jackson is not being sued.

79. Municipal Defendants deny the allegations contained in paragraph 79 of the complaint.

80. Municipal Defendants deny the allegations contained in paragraph 80 of the complaint.

81. Municipal Defendants deny the allegations contained in paragraph 81 and footnote 6 of the complaint.

82. Municipal Defendants deny the allegations contained in paragraph 82 of the complaint.

83. Municipal Defendants deny the allegations contained in paragraph 83 of the complaint.

84. Municipal Defendants deny the allegations contained in paragraph 84 of the complaint.

85. Municipal Defendants deny the allegations contained in paragraph 85 of the complaint.

86. Municipal Defendants deny the allegations contained in paragraph 86 of the complaint.

87. Municipal Defendants deny the allegations contained in paragraph 87 of the complaint.

88. Municipal Defendants deny the allegations contained in paragraph 88 of the complaint.

89. Municipal Defendants deny the allegations contained in paragraph 89 of the complaint.

90. Municipal Defendants deny the allegations contained in paragraph 90 of the complaint.

91. Municipal Defendants deny the allegations contained in paragraph 91 of the complaint.

92. Municipal Defendants deny the allegations contained in paragraph 92 of the complaint.

93. Municipal Defendants deny the allegations contained in paragraph 93 of the complaint.

94. Municipal Defendants deny the allegations contained in paragraph 94 of the complaint.

95. Municipal Defendants deny the allegations contained in paragraph 95 of the complaint.

96. Municipal Defendants deny the allegations contained in paragraph 96 of the complaint.

97. Municipal Defendants deny the allegations contained in paragraph 97 of the complaint.

98. Municipal Defendants deny the allegations contained in paragraph 98 of the complaint.

99. Municipal Defendants deny the allegations contained in paragraph 99 of the complaint.

100. Municipal Defendants deny the allegations contained in paragraph 100 of the complaint.

101. Municipal Defendants deny the allegations contained in paragraph 101 of the complaint.

102. Municipal Defendants deny the allegations contained in paragraph 102 of the complaint.

**VIOLATION OF CIVIL RIGHTS PURSUANT TO TITLE 42 U.S.C. § 1983  
(Refusing or Neglecting to Prevent)**

103. In response to the allegations contained in paragraph 103 of the complaint, Municipal Defendants incorporate their prior responses to paragraphs 1-102.

104. Municipal Defendants deny the allegations contained in paragraph 104 of the complaint.

105. Municipal Defendants deny the allegations contained in paragraph 105 of the complaint.

106. Municipal Defendants deny the allegations contained in paragraph 106 of the complaint, including sub-paragraphs (a)-(c).

107. Municipal Defendants deny the allegations contained in paragraph 107 of the complaint.

108. Municipal Defendants deny the allegations contained in paragraph 108 of the complaint.

109. Municipal Defendants deny the allegations contained in paragraph 109 of the complaint.

**Violation of Civil Rights Pursuant to Title 42 U.S.C. § 1983  
(Failure to Intervene)**

110. In response to the allegations contained in paragraph 110 of the complaint, Municipal Defendants incorporate their prior responses to paragraphs 1-109.

111. Municipal Defendants deny the allegations contained in paragraph 111 for lack of sufficient information and as stating legal conclusions.

112. Municipal Defendants deny the allegations contained in paragraph 112 of the complaint.

113. Municipal Defendants deny the allegations contained in paragraph 113 of the complaint.

**VII.**

**DAMAGES**

114. In response to the allegations contained in paragraph 114 of the complaint, Municipal Defendants incorporate their prior responses to paragraphs 1-113.

115. Municipal Defendants deny the allegations contained in paragraph 115 of the complaint, including sub-paragraphs a-e, and further deny that Plaintiffs are entitled to any relief whatsoever.

In response to the unnumbered paragraph following paragraph 115, Defendants deny the allegations and further deny that Plaintiffs are entitled to any relief whatsoever.

**VII.**

**PUNITIVE DAMAGES**

116. In response to the allegations contained in paragraph 116 of the complaint, Municipal Defendants incorporate their prior responses to paragraphs 1-115.

117. Municipal Defendants deny the allegations contained in paragraph 117 of the complaint.

**VIII.**

**JURY TRIAL DEMANDED**

118. Municipal Defendants deny the allegations contained in paragraph 118 of the complaint.

**PRAYER FOR RELIEF**

Municipal Defendants deny the allegations contained in the unnumbered paragraph beginning with “WHEREFORE, PREMISES CONSIDERED, ...”, and Municipal Defendants further deny that Plaintiffs are entitled to any relief whatsoever.

Consistent with the answers and affirmative defenses set forth herein, Municipal Defendants request that the complaint be dismissed, with all costs taxed to Plaintiffs and an award of attorney’s fees be provided to Municipal Defendants.

THIS the 1st day of March, 2023.

Respectfully submitted,

PHELPS DUNBAR LLP

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**ATTORNEYS FOR MUNICIPAL**

**DEFENDANTS THE CITY OF**

**LEXINGTON, MISSISSIPPI CHARLES**

**HENDERSON, AND AUSTIN MOORE**



**CERTIFICATE OF SERVICE**

I certify that, on March 1, 2023, I had this Answer and Affirmative Defenses electronically filed with the Clerk of the Court, using the CM/ECF system, which sent notification of such filing to all counsel of record.

/s/ Mallory K. Bland

Mallory K. Bland